



CRM-M-40505-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-45798-2024 in/and
CRM-M-40505-2024 (O&M)
Date of Decision: 27.11.2024

RAM KUMAR BATH

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lupil Gupta, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

...

SUMEET GOEL, J. (Oral)

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Application is allowed, as prayed for, subject to all just exceptions. Annexures A1 to A3 are taken on record.

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1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.48 dated 06.03.2023, registered for the offences punishable under Sections 376, 372 and 120-B of IPC and Section 4 of POCSO Act at Police Station City Jagraon, District Ludhiana.
2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Statement of Manpreet Kaur daughter of Beera Singh resident of Sidhana, District Bathinda, Currently wife of Gurpreet Singh resident of Agwar Lapon, Jagraon, Age about 20 Years, Mob. No. 97815-17053.

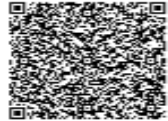
I hereby state that I am resident of above mentioned address and am household woman. My date of birth is 05.08.2005. My marriage was solemnized about four ago with Gurpreet Singh son of Darshan Singh

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resident of Agwar Lapon, Jagraon and any child is not born from our wedlock. I am 8th class pass. About 11 months ago our neighbor Tej Kaur Bholi, whose husband's name I do not remember, used to visit our house quite often. On 30.03.2022 at time about 10:00 AM she took me to her house on the pretext of giving me food to eat. Tej Kaur @Bholi gave me food to eat at her house and about half an hour after eating food I became unconscious and when I regained consciousness then I came to know that Tej Kaur @ Bholi had sold me to Raj Kumar Baath son of Jagdish Baath resident of Daudsar, Rajasthan. He was making physical relations with me against my wishes and when I used to stop him from doing so then above mentioned Ram Kumar Baath used to give beatings to me. Somehow I saved myself from Ram Kumar Baath and made phone call to my husband Gurpreet Singh and he saved me from Ram Kumar Baath. For the last 11 eleven months he was making physical relations with me forcibly by detaining me in the house. He had also forcibly performed court marriage with me by giving threats to me, which I shall produce later on. Legal action be taken against above mentioned accused. Statement recorded to you, read over, is correct. Action be taken. Sd/- Manpreet Kaur. Statement correct, Sd/ Gurpreet Singh. Attested, Sd/- Kamaldeep Kaur Incharge Security Branch Jagraon (Distt. Rural) Date 06.03.2023.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 18.03.2023. Learned counsel for the petitioner has submitted that in fact the petitioner and the victim has started living together as husband and wife. In order to buttress his arguments, learned counsel for the petitioner has relied upon a deed of marriage dated 31.03.2022 (copy whereof has been appended as Annexure P-2 with the petition). Learned counsel for the petitioner has iterated that the petitioner has been falsely implicated into the FIR in question as the said marital relationship fell apart. Learned counsel for the petitioner has further iterated that the charges in the matter in hand were framed on 01.09.2023 but only one prosecution witness has been examined till date whereas there are 12 total cited prosecution witnesses. It has been iterated that trial pace is tardy. In order to buttress his arguments, learned counsel for the petitioner has drawn the attention of this Court to the zimni orders passed by the trial Court dated 27.09.2023, 25.10.2023, 12.12.2023, 08.02.2024, 19.03.2024, 04.04.2024, 12.04.2024, 20.04.2024 and 21.10.2024. Thus, regular bail is

prayed for.



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4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 18.03.2023 whereinafter investigation was carried out & challan was presented on 27.04.2024. Total 12 prosecution witnesses have been cited and only 1 prosecution witness has been examined till date. The rival contention of the learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question as also the weightage/veracity required to be attached to the deed of marriage dated 31.03.2022 (copy whereof has been appended as Annexure P-2 with the petition); shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence.

Indubitably, the petition in hand is the second bail petition preferred on behalf of the petitioner. The first bail petition was dismissed as withdrawn on 03.07.2023 and the order passed therein, reads thus:

“The petitioner is seeking regular bail in the case bearing FIR No.48 dated 06.03.2023 under Sections 376, 372, 120-B IPC and Section 4 of the POCSO Act registered at Police Station City Jagraon, District Ludhiana.

2. Custody certificate has been placed on record.

3. After arguing for some time, learned counsel for the petitioner seeks to withdraw the present petition.

4. Dismissed as withdrawn.”



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At this juncture, it would be apposite to refer herein to a judgment passed by this Court in the case of '**Rafiq Khan Vs. State of Haryana and another**' **CRA-S-2332 of 2023** decided on 22.04.2024, relevant whereof reads as under:-

"I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed."

Keeping in view the extended custody of the petitioner and the prosecution not bringing forward its evidence during the course of trial, this Court is inclined to favourably consider the present (second regular bail petition) filed by the petitioner.

Still further, a perusal of the zimni orders dated 27.09.2023, 25.10.2023, 12.12.2023, 08.02.2024, 19.03.2024, 04.04.2024, 12.04.2024, 20.04.2024 and 21.10.2024 passed by the learned trial Court indicate that the prosecution witnesses are not coming forward and therefore, the trial is not culminating. The procrastination in culmination of the trial cannot be attributed to the petitioner in any manner whatsoever. At this juncture, it



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would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '***Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another***' decided in ***Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024***', relevant whereof reads as under:-

"18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents. juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect, may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

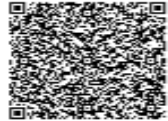
19 If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly. howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

As per the custody certificate dated 26.11.2024 filed by the learned State counsel, the petitioner has suffered incarceration for more than 01 year, 08 months and 05 days & is not shown to be involved in any other case. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. In view of totality of factual matrix of the present case, the instant petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that

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may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression



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11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

27.11.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No